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10 **UNITED STATES DISTRICT COURT**

11 **EASTERN DISTRICT OF CALIFORNIA**

12 KIM-ANH PHAM, on behalf of herself and all
13 others similarly situated,

14 Plaintiff,

15 v.
16 LINCOLN BENEFIT LIFE COMPANY, and
17 DOES 1 to 50, inclusive,

18 Defendant.

19 Case No. 2:23-cv-00561-KJM-AC

20 Hon. Kimberly J. Mueller
21 Courtroom 3

22 **DEFENDANT LINCOLN BENEFIT LIFE
23 COMPANY'S MEMORANDUM OF
24 POINTS AND AUTHORITIES IN SUPPORT
25 OF ITS MOTION TO DISMISS**

26 [Filed concurrently with Notice Motion of
27 Motion, Declaration of Tarifa B. Laddon, and
28 [Proposed] Order]

29 Date: August 11, 2023
30 Time: 10:00 a.m.
31 Place: Courtroom 3

32 Complaint Filed: March 23, 2023

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I. INTRODUCTION

2 Plaintiff has presented a Complaint heavy on broad, generalized statements, but bereft of
3 factual support for the Plaintiff's claims. It should be dismissed. The Complaint contains labels
4 and conclusions that do not satisfy Rule 8(a)'s pleading standards and fail to identify the factual
5 bases for Plaintiff's purported claims. Plaintiff instead enumerated statutory requirements relating
6 to the lapses of life insurance policies and alleged generally that Lincoln Benefit did not comply
7 with the cited statutes. But Plaintiff did not allege whether or how Lincoln Benefit's alleged non-
8 compliance caused harm to the policyholder (or Plaintiff), she did not allege *any facts whatsoever*
9 regarding her performance (or excuse for nonperformance) of her obligations under the policy, and
10 she did not allege any facts to support that conditions precedent were satisfied (or that they were
11 excused) and/or that proceeds would be payable in these circumstances.

Even assuming the truth of Plaintiff's general averments as to statutory non-compliance, Plaintiff's allegations do not suffice to state a claim for breach of contract or breach of the implied covenant of fair dealing. If Lincoln Benefit allegedly breached the policy by not sending certain notices to the policyholder, Plaintiff must allege that the failure to send such notices caused harm to the policyholder or to Plaintiff (*i.e.*, that the alleged non-compliant notices resulted in harm to the policyholder). In the absence of a causal link between Lincoln Benefit's alleged conduct and the alleged harm, Plaintiff's breach of contract claim fails. Similarly, Plaintiff did not plead that she (or anyone) paid premiums to maintain coverage or that she was excused from doing so. Nor did Plaintiff plead that she submitted due proof of death, the clearly defined condition precedent to filing a claim for payment of the death benefit. Plaintiff did not aver *any facts* to support her purported conclusion that benefits are due.

23 The absence of this basic information falls short of pleading requirements and provides no
24 more than a “speculative level” of Plaintiff’s supposed right to relief. *Bell Atlantic Corp. v.*
25 *Twombly*, 550 U.S. 544, 555 (2007). This Court has cautioned against a pleading simply alleging
26 a wrong has been committed and demanding relief. *Ztex Energy, LLC v. Crest Oil and Gas, Ltd.*,
27 2011 WL 445028, at *4 (E.D. Cal. Feb. 8, 2011). Plaintiff was obligated to – but did not – identify
28 more than labels and conclusions. She must plead basic facts to support the elements of the causes

1 of action that she asserted against Lincoln Benefit. Plaintiff failed to do so, and her claims should
 2 be dismissed.

3 II. STATEMENT OF FACTS

4 A. The Policy

5 In 2000, Thanh C. Dang purchased a 20-year Term Life Insurance To Age 95 Policy (the
 6 “Policy”) from Lincoln Benefit. ECF No. 1 (“Compl.”) ¶ 32.¹ Lincoln Benefit issued the Policy
 7 on November 10, 2000. Pol. at 1. The Policy provided coverage in the amount of \$500,000. *Id.*
 8 Dang designated Kimanh Pham, his wife and Plaintiff in this action, as the beneficiary of the Policy
 9 and co-owner. *Id.* at 16 (application).²

10 The Policy required annual premium payments of \$710 for 20 years.³ *Id.* at 3. After the
 11 20-year level premium period, premiums were scheduled to surge to \$12,455 (approximately 17.5
 12 times the level premium amount)⁴ and to increase thereafter. *Id.* at 4. Beyond the 20-year level-
 13 premium period, Dang could “renew each year until he was 95 years old,” but his annual premium
 14 would be exponentially more than the level premium of \$710. *Id.*

15 The Policy was “in force” as long as “the required premiums are paid . . . when due or within
 16 the grace period.” Pol. at 5; *see also id.* at 7 (“To keep this policy in force during the lifetime of
 17 the insured, you must pay the premiums when they are due.”). The Policy provided that Lincoln
 18 Benefit would “pay the death benefit when we receive *due proof* that the insured has died. Death

19

20 ¹ Plaintiff represented that a copy of the Policy was attached as Exhibit 2 to the Complaint, Compl.
 21 ¶ 32, but no such exhibit was attached. A true and correct copy of the Policy is attached as Exhibit
 22 1 to the Declaration of Tarifa B. Laddon (“Pol.”), filed concurrently herewith. The Complaint
 23 refers to and expressly intended to attach and incorporate the Policy, and as such, the Court may
 24 consider it in connection with this Motion. *United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir.
 25 2003) (“Even if a document is not attached to a complaint, it may be incorporated by reference into
 26 a complaint [in consideration of a Rule 12(b)(6) motion] if the plaintiff refers extensively to the
 27 document or the document forms the basis of the plaintiff’s claim.”).

28 ² The Policy included an Additional Insured Term Insurance Benefit Rider, which provided
 29 \$500,000 in coverage for Plaintiff, with Dang as the beneficiary. *Id.* at 3, 17. The Policy also
 30 included a Children’s Protection Benefit Rider with \$10,000 in coverage for Ethan Dang, the son
 31 of Dang and Plaintiff. *Id.* at 3, 17.

32 ³ The annual premium of \$710 included \$375 for Dang’s coverage, \$275 for the Additional Insured
 33 Term Insurance Benefit Rider insuring Plaintiff, and \$60 for the Children’s Protection Benefit Rider
 34 covering Ethan Dang. *Id.* at 3, 17.

35 ⁴ The premium due in Year 21 was **more than 1600%** the level premium amount. *Id.* at 4.

1 must occur while this policy is in force.” *Id.* at 6 (emphasis added). Due proof of death was defined
 2 as “(1) a certified original copy of the death certificate[;] or (2) a certified copy of a decree of a
 3 court of competent jurisdiction as to the finding of death; or (3) a written statement by a medical
 4 doctor who attended the deceased at the time of death; or (4) any other proof satisfactory to the
 5 company.” *Id.* at 5.

6 The Policy was recorded as lapsed in December 2020, but Plaintiff provided no detail or
 7 facts in the Complaint as to the factual basis for the alleged recording of the lapse or the surrounding
 8 circumstances. Compl. ¶ 35. Dang allegedly died in October 2022.⁵ *Id.* ¶ 36. According to
 9 Plaintiff, the Policy was “in effect” at the time of Dang’s death. *Id.* ¶ 60. Plaintiff alleged that she
 10 submitted a “claim” to Lincoln Benefit, *id.* ¶ 39, and that Lincoln Benefit failed to pay the “death
 11 benefits payable” on the Policy. *Id.* ¶ 40. Plaintiff did not allege that she (or anyone else) paid
 12 premiums to maintain the Policy as “in force,” nor did Plaintiff allege that Lincoln Benefit received
 13 due proof of death.

14 **B. The Statutes**

15 More than 12 years after Lincoln Benefit issued the Policy, the California Legislature
 16 enacted Insurance Code Sections 10113.71 and 10113.72. The Statutes impose four primary
 17 requirements:

18 (1) life insurance policies “issued or delivered” in the state must provide at least a 60-day
 19 grace period before lapse (Cal. Ins. Code § 10113.71(a));

20 (2) an individual life insurance policy may not be “issued or delivered in this state until the
 21 applicant has been given the right” to designate a third person (a “designee”) to receive a notice of
 22 lapse for nonpayment of premium (*id.* § 10113.72(a));

23 (3) an insurer must “notify the policy owner annually of the right to” designate or change a
 24 prior written designation made pursuant to the third party designation requirement for new policies
 25 as set forth in Section 10113.72(a) (*id.* § 10113.72(b)); and

26 (4) an insurer must mail to a policy owner, any designee named pursuant to Section

27
 28 ⁵ Although not addressed in the Complaint, Lincoln Benefit did not receive notice of Dang’s death,
 let alone a death certificate and/or proof of death.

1 10113.72(a), and any known assignee a notice of a potential lapse within 30 days after a premium
 2 payment is due and unpaid and at least 30 days before the effective date of the lapse. *Id.* §§
 3 10113.71(b)(1),(3), 10113.72(c).

4 **C. Plaintiff's Claims**

5 Plaintiff asserted two claims (both individually and on a class-wide basis) against Lincoln
 6 Benefit: for “breach of contractual duty to pay a covered claim” (Compl. ¶¶ 56-61) (Count I), and
 7 breach of the implied covenant of good faith and fair dealing in insurance policy (*id.* ¶¶ 62-71)
 8 (Count II).

9 **III. ARGUMENT**

10 **A. Legal Standard**

11 “A Rule 12(b)(6) motion tests the legal sufficiency of a claim.” *Navarro v. Block*, 250 F.3d
 12 729, 732 (9th Cir. 2001). Dismissal can be based on the lack of a cognizable legal theory or the
 13 absence of sufficient facts alleged. *Id.* In deciding a motion to dismiss, the Court must apply a
 14 “plausibility standard,” which is guided by two “working principles.” *Ashcroft v. Iqbal*, 556 U.S.
 15 662, 678 (2009). First, although “a court must accept as true all of the allegations contained in a
 16 complaint,” that tenet “is inapplicable to legal conclusions” or to “[t]hreadbare recitals of the
 17 elements of a cause of action, supported by mere conclusory statements[.]” *Id.* This demands more
 18 than unadorned accusations: “sufficient factual matter” must make the claim at least plausible.
 19 *Iqbal*, 556 U.S. at 678. In the same vein, conclusory or formulaic recitations of elements do not
 20 alone suffice. *Id.* (quoting *Twombly*, 550 U.S. at 555).

21 “Second, only a complaint that states a plausible claim for relief survives a motion to
 22 dismiss,” and determining whether a “plausible” claim is stated is “a context-specific task that
 23 requires the reviewing court to draw on its judicial experience and common sense.” *Id.* at 679.
 24 “[W]here the well-pleaded facts do not permit the court to infer more than the mere possibility of
 25 misconduct, the complaint . . . has not ‘show[n]’ that the pleader is entitled to relief.” *Id.* at 679.
 26 Furthermore, courts need not accept as true allegations in a complaint that are directly contradicted
 27 by documents referenced or incorporated in that complaint. *See Alamilla v. Hain Celestial Grp.,*
 28 *Inc.*, 30 F. Supp. 3d 943, 944 (N.D. Cal. 2014).

1 **B. Plaintiff Failed to Plead the Elements of a Claim for Breach of Contract.**

2 “To state a claim for breach of contract, plaintiff must *plead*: (1) the existence of a contract;
 3 (2) plaintiff’s performance or excuse for non-performance; (3) breach; and (4) that the breach
 4 caused plaintiff’s harm.” *Kozlowski v. Bank of Am., N.A.*, 2018 WL 2096381, at *5 (E.D. Cal. May
 5 7, 2018) (emphasis added) (citing *Wall Street Network, Ltd. v. New York Times Co.*, 164 Cal. App.
 6 4th 1171, 1178 (2008)). “[A] pleading may not simply allege a wrong has been committed and
 7 demand relief.” *Ztex Energy, LLC*, 2011 WL 445028, at *4 (emphasis added). The underlying
 8 requirement is that a pleading give “fair notice” of the claim being asserted and the “grounds upon
 9 which it rests.” *Yamaguchi v. U.S. Dep’t of Air Force*, 109 F.3d 1475, 1481 (9th Cir. 1997).

10 Plaintiff’s breach of contract claim should be dismissed because Plaintiff did not plead at
 11 least three of the four requisite elements of the claim. Plaintiff simply identified Lincoln Benefit’s
 12 alleged non-compliance and demanded relief. This is insufficient to state a claim.

13 **1. Plaintiff failed to plead a causal link.**

14 “An essential element of a claim for breach of contract are damages resulting from the
 15 breach.” *Med. Sales & Consulting Grp. v. Plus Orthopedics USA, Inc.*, 2011 WL 5075970, at *11
 16 (S.D. Cal. Oct. 25, 2011) (quoting *St. Paul Fire & Marine Ins. Co. v. Am. Dynasty Surplus Lines
 17 Ins. Co.*, 101 Cal. App. 4th 1038 (2002)). Where a plaintiff does not allege causation, her claim
 18 for breach of contract fails. See *Troyk v. Farmers Grp., Inc.*, 171 Cal. App. 4th 1305, 1352 (2009)
 19 (“Implicit in the element of damage [on a breach of contract claim] is that the defendant’s breach
 20 *caused* the plaintiff’s damage.”) (emphasis in original). See also *Satvati v. Allstate Northbrook
 21 Indem. Grp.*, --- F.3d ----, 2022 WL 6184730, at *5 (C.D. Cal. Oct. 6, 2022) (dismissing breach of
 22 contract claim when plaintiff failed to plead “sufficient factual information” alleging that alleged
 23 breach caused damages).⁶

24 In the life insurance context, courts have recognized that a plaintiff must establish that the
 25 insurer’s breach *caused* the alleged harm. *Stewart v. Life Ins. Co. of N. Am.*, 388 F. Supp. 2d 1138,

26
 27 ⁶ Consistent with decisional law, California Civil Code Section 3300 “generally requires proof of
 28 causation: ‘For the breach of an obligation arising from contract, the measure of damages . . . is the
 amount which will compensate the party aggrieved for all the detriment *proximately caused
 thereby[.]*’” *Id.* (quoting Cal. Civil Code Section 3300).

1 1142 (E.D. Cal. 2005) (“Plaintiff alleges that she has been damaged by [the defendant’s] breach
 2 because she not been able to recover the policy benefits due for life insurance on Mr. Stewart. . . .
 3 *Even if Plaintiff suffered damages, to be compensable such harm must have been caused by LINA’s*
 4 *breach of the policy.”*) (emphasis added). At least one court confronting a breach of contract claim
 5 in a recent lapse dispute confirmed that a causal link must be established – and certainly alleged in
 6 the first instance. *See Moriarty v. Am. Gen. Life Ins. Co.*, 2022 WL 4103080 at *1-*2 (S.D. Cal.
 7 Sept. 7, 2020) (denying summary judgment on breach of contract claim based on factual dispute as
 8 to whether defendant’s conduct had “actually caused damage to Plaintiff”); *see also Kozlowski*,
 9 2018 WL 2096381, at *5.

10 In the Complaint, Plaintiff suggested that various communications in 2020 (or lack thereof)
 11 breached the Policy.⁷ Plaintiff also alleged that Lincoln Benefit did not pay her “claim.” And
 12 Plaintiff demands payment of the death benefit. But Plaintiff did not “identify any of the insurance
 13 policy terms . . . [or] give [Lincoln Benefit] . . . information that could permit [it] to respond to the
 14 complaint or prepare a defense. They permit no reasonable inference of [Lincoln Benefit’s]
 15 liability.” *O’Brien v. HII Ins. Sols.*, No. 2:20-CV-02115-KJM-AC, 2021 WL 1060398, at *7 (E.D.
 16 Cal. Mar. 19, 2021). It is insufficient for Plaintiff to simply “allege a wrong has been committed
 17 and demand relief.” *Ztex Energy, LLC*, 2011 WL 445028, at *4.

18 As in *Stewart*, Plaintiff stated generally that she suffered harm based on Lincoln Benefit’s
 19 “refus[al] to pay death benefits.”⁸ Compl. ¶ 60. Even if this is sufficient to allege harm, Plaintiff
 20 did not aver here or elsewhere that the harm to Plaintiff was “caused by [Lincoln Benefit’s] breach
 21 of the policy.” *Stewart*, 388 F. Supp. 2d at 1142 (emphasis added). For example, Plaintiff did not
 22

23 ⁷ Although not clear from the face of the Complaint, Plaintiff appears to have asserted two potential
 24 breaches of the Policy: (1) that Lincoln Benefit failed to “timely invite” Dang to designate a third
 25 party to receive Policy notices, Compl. ¶ 58; and (2) that Lincoln Benefit failed to provide the
 26 required notices to all persons with an interest in the Policy, *id.* ¶ 59.

27 ⁸ Plaintiff also stated summarily that Lincoln Benefit’s “violations of the law” caused her
 28 unspecified damages. Compl. ¶ 61 (“As a result of Defendant’s violations of the law and breaches
 29 of its life insurance policies, the Class—including Plaintiff—has sustained direct damages, as well
 30 as other foreseeable and incidental damages, in an amount to be determined according to proof at
 31 the time of trial, plus interest.”). This is the very “[t]hreadbare recital[] of the elements of a cause
 32 of action, supported by mere conclusory statements,” the Supreme Court has deemed insufficient.
Iqbal, 556 U.S. at 678.

1 allege that Dang received notices from Lincoln Benefit and believed the Policy to have lapsed;
 2 Plaintiff did not allege that, had Lincoln Benefit provided different or more notices, Dang (or
 3 Plaintiff) would have paid more premiums; Plaintiff did not allege that Dang wanted coverage to
 4 continue and was harmed by the purported loss of coverage.

5 Although it is not necessary or appropriate for the Court to fabricate legal theories that may
 6 support Plaintiff's threadbare allegations, the sequence of events set forth in the Complaint
 7 demonstrates that Plaintiff's claims are not plausible. *Iqbal*, 556 U.S. at 679. Dang paid the annual
 8 level premium of \$710 for twenty years. Compl. ¶ 33; Pol. at 3. In Year 21 (2020), the premium
 9 increased more than 1600%, to \$12,455. Pol. at 4. The Policy was subsequently recorded as lapsed
 10 for non-payment of premium.⁹ Compl. ¶ 35. Consistent with the stated purpose of the Policy, the
 11 timeline suggests that Dang did not want to continue coverage under the now enormously expensive
 12 Policy and intentionally did not renew it in Year 21. Placed in the proper context – a dramatic
 13 premium increase coupled with no allegation that Lincoln Benefit's alleged breaches played any
 14 role in the lapse of the Policy – Plaintiff failed to plausibly assert causation.¹⁰ Without this critical
 15 element of a breach of contract cause of action, Plaintiff's claim must be dismissed. *Satvati*, 2022
 16 WL 6184730, at *5.

17 **2. Plaintiff failed to plead performance or excuse for nonperformance.**

18 Plaintiff's breach of contract claim similarly (and independently) fails because Plaintiff
 19 failed to plead performance or excuse for nonperformance, an established element of a breach of
 20 contract claim under California law. "To state a claim for breach of contract under California law,
 21 a plaintiff must sufficiently allege (1) the existence of a contract, (2) *performance or excuse for*
 22 *nonperformance by the plaintiff*, (3) breach by the defendants, and (4) resulting damages to the
 23 plaintiff." *Foundation Auto Holdings, LLC v. Weber Motors*, 2022 WL 4237720, at *3 (E.D. Cal.
 24 Sept. 14, 2022) (emphasis added) (citing *Alcalde v. NAC Real Est. Invs. & Assignments, Inc.*, 316
 25 F. App'x 661, 662 (9th Cir. 2009)). "When a plaintiff asserts a claim for breach of contract, it has

26 ⁹ As discussed *supra*, Plaintiff did not allege that premiums were paid or were not paid. The
 27 Complaint is silent about the payment of premium, which is one of many reasons it is impossible
 to discern the bases for Plaintiff's claims.

28 ¹⁰ Paying a benefit to Pham in these circumstances would constitute an unwarranted windfall.

1 a ‘duty to plead its own performance or excuse for the failure to perform.’” *Id.* (quoting *Merced*
 2 *Irrigation Dist. v. Cnty. Of Mariposa*, 941 F. Supp. 2d 1237, 1246 (E.D. Cal. 2013)). *See also*
 3 *Villarreal v. Wells Fargo Bank, N.A.*, 814 F.3d 763, 767 (5th Cir. 2016) (“[Plaintiff] urged that
 4 Wells Fargo breached its contract by failing to send notices to her new residence ... and to make
 5 automatic withdrawals from her checking account for mortgage payments. But a plaintiff must
 6 allege her own performance, because ‘a party to a contract who is [herself] in default cannot
 7 maintain a suit for its breach. At no point did [Plaintiff] plead facts supporting the second element
 8 of her breach-of-contract claims—that she performed under the contracts.”) (internal quotations
 9 omitted).

10 In life insurance disputes, courts have recognized the need for a plaintiff to plead
 11 performance or excuse for nonperformance by, for example, alleging that the plaintiff “has
 12 performed all of his obligations to Defendant under the terms of the contract except those
 13 obligations he was prevented or excused from performing.” *Deluca v. Mass. Mut. Life Ins. Co.*,
 14 2005 WL 1562033, at *4, n.5 (E.D. Cal. June 28, 2005). A plaintiff must specifically plead that he
 15 has performed by paying premiums – or that he was excused from paying premiums. *See* Cal. Ins.
 16 Code § 480 (“An insurer is entitled to payment of the premium as soon as the subject matter insured
 17 is exposed to the peril insured against.”); *Estate of Piper v. Met. Tower Life Ins. Co.*, 2009 WL
 18 2431956 (S.D.N.Y. Aug. 10, 2009) (dismissing plaintiffs’ breach of contract claim because policy
 19 lapsed due to plaintiffs’ “failure to pay sufficient premiums prior to [insured’s] death. [Plaintiffs]
 20 did not duly perform on the contract, and Plaintiffs’ breach of contract claim therefore fails.”); *Cf.*
 21 *Bentley v. United of Omaha Life Ins. Co.*, 2017 WL 10518099, at *7 (C.D. Cal. Aug. 8,
 22 2017) (dismissing individual breach of contract claim with similar allegations because plaintiff
 23 “fail[ed] to make the required payment premiums”).

24 Here, according to its plain terms, the Policy remained “in force” as long as “the required
 25 premiums are paid . . . when due or within the grace period.” Pol. at 5; *see also* Pol. at 7 (“To keep
 26 this policy in force during the lifetime of the insured, you must pay the premiums when they are
 27 due.”). Thus, the Policy required the payment of premiums to keep the Policy in force. In her
 28 Complaint, Plaintiff alleged with no factual (or legal) support whatsoever that the Policy was “still

1 in effect at the time [Plaintiff] made their claim.” Compl. ¶ 60. Yet Plaintiff did not allege that (1)
 2 premiums were paid to keep the Policy in force; or (2) premiums were excused. The Complaint is
 3 devoid of any allegation whatsoever regarding performance or the excusal of nonperformance. This
 4 is fatal to Plaintiff’s breach of contract claim. Plaintiff did not allege that Dang actually paid (or
 5 attempted to pay) the \$12,455 premium. Nor did Plaintiff allege that the possible non-payment of
 6 \$12,455 premium was excused. For example, she did not allege that an external event or
 7 impediment prevented Dang from paying the \$12,455 premium. She did not allege that Dang did
 8 not receive notices of non-payment of premium sent by Lincoln Benefit. She did not allege that
 9 the \$12,455 premium would have been paid if Lincoln Benefit had sent different or additional
 10 notices.

11 If premiums were paid until Dang’s alleged death, Plaintiff must allege this “performance.”
 12 On the other hand, if it is Plaintiff’s position that performance (*i.e.*, the payment of premiums) was
 13 excused, Plaintiff must allege this. Plaintiff has not alleged either way. She therefore failed to
 14 plead an essential element of a breach of contract claim, and her claim should be dismissed.

15 **3. Plaintiff failed to plead that conditions precedent were satisfied.**

16 Even if the Court deemed the Complaint sufficient to plead a causal link and performance
 17 (or excuse of nonperformance), Plaintiff’s breach of contract claim still fails because Plaintiff did
 18 not plead that conditions precedent were satisfied. Where “contractual liability depends upon the
 19 satisfaction or performance of one or more conditions precedent, the allegation of such satisfaction
 20 or performance is an essential part of the cause of action.” *Careau & Co. v. Sec. Pac. Bus. Credit,*
 21 *Inc.*, 222 Cal. App.3d 1371, 1389 (1990). Thus, the “failure to allege [*i.e.*, to plead] the satisfaction,
 22 waiver or excuse of a condition precedent amounts to a failure to state a claim for relief.” *Orlando*
 23 *v. Carolina Cas. Ins. Co.*, 2007 WL 781598, at *4 (E.D. Cal. Mar. 13, 2007). While general
 24 allegations of satisfaction may be sufficient, “where the condition is an event, as distinguished from
 25 an act to be performed by the plaintiff, a specific allegation of the happening of the condition is a
 26 necessary part of pleading the defendant’s breach.” *Careau*, 222 Cal.App.3d at 1389 (emphasis
 27 added). Courts have therefore recognized that “an excuse for nonperformance of a condition
 28 precedent must be specifically pleaded.” *Foundation Auto*, 2022 WL 4237720, at *6 (citing *Durrell*

1 *v. Sharp Healthcare*, 183 Cal. App. 4th 1350, 1367 (2010); 4 Witkin, Cal. Proc. 6th Plead Section
 2 540 (2022)). *See also id.* at *5-6 (dismissing breach of contract claim because plaintiff did “not
 3 sufficiently allege performance or excuse for nonperformance”); *Munoz v. Wells Fargo Bank, N.A.*,
 4 2015 WL 12748816 (C.D. Cal. Jan. 9, 2015) (dismissing plaintiffs’ breach of contract claim
 5 because allegation that plaintiffs “duly performed their obligations ‘until prevented by defendants
 6 from further performance’” was “wholly conclusory and thus fail[ed] to state a plausible claim”
 7 and plaintiffs pleaded no facts “that would indicate their obligation to pay [their mortgage
 8 payments] was excused”).

9 In life insurance disputes in which plaintiffs allege a failure to pay benefits, courts have
 10 recognized due proof of death as a condition precedent that must be pled. In *Finley v. Transamerica*
 11 *Life Ins. Co.*, 2015 WL 3919598, at *3 (N.D. Cal. June 25, 2015), the plaintiff alleged breach of
 12 contract against a life insurer for failure to pay death benefits. The court dismissed the plaintiff’s
 13 breach of contract claim based on the policy language, explaining that “[t]he plain import of this
 14 language is that Transamerica was not obligated to pay . . . the policy benefit until she provided
 15 ‘due proof’ of [the insured’s] death. [The plaintiff] does not allege that she did so.” After all, due
 16 proof is required to enable the insurer to form an estimate of its rights and liabilities. *Culley v. New*
 17 *York Life Ins. Co.*, 27 Cal. 2d 187, 192–93, (1945); *see also Am. Nat. Ins. Co. v. Yee Lim Shee*, 104
 18 F.2d 688, 693 (9th Cir. 1939) (due proof must “enable the company to consider its rights and
 19 liabilities”).

20 In the absence of due proof of death, Lincoln Benefit could not assess its rights and liabilities
 21 under the Policy, and there can be no contractual obligation to pay the proceeds in the absence of
 22 such assessment in the first instance.¹¹ As in *Finley*, the Policy provided that Lincoln Benefit
 23 would “pay the death benefit when we receive *due proof* that the insured has died.” Pol. at 6

24 ¹¹ Due proof of death, which would inform Lincoln Benefit’s assessment of its rights and liabilities,
 25 must be analyzed according to the facts and circumstances of each purported death under the
 26 specific terms of each policy. By way of example, this Policy provided that the proceeds, if payable,
 27 would be adjusted “[i]f the insured’s age or sex shown on the app[lication] has been misstated.”
 28 Pol. at 8. Due proof of death would allow Lincoln Benefit to assess whether an adjustment is
 warranted. Due proof of death would also allow Lincoln Benefit to assess potential fraud (*i.e.*, the
 confirm the fact and manner of death and that the beneficiary is entitled to the proceeds). These
 are not mere formalities. The Policy requires due proof of death for good reason, and Lincoln
 Benefit is entitled to due proof of death to assess its rights and liabilities in each instance.

(emphasis added). Due proof of death is defined as “(1) a certified original copy of the death certificate[;] or (2) a certified copy of a decree of a court of competent jurisdiction as to the finding of death; or (3) a written statement by a medical doctor who attended the deceased at the time of death; or (4) any other proof satisfactory to the company.” *Id.* at 5. These forms of “due proof” are different and are evaluated on an individualized basis, but the Policy makes clear that *some form* of due proof of death is required. Plaintiff did not mention due proof of death, and she certainly did not allege that she submitted it. Although Plaintiff alleged that “through counsel [she] contacted Lincoln Benefit and submitted a claim for benefits,” Compl. ¶ 39, it is not clear what Plaintiff meant by this, nor does this align with the Policy terms requiring “due proof of death.” Due proof of death is a condition precedent, and it must be satisfied (or excused) for purposes of Lincoln Benefit’s obligation to pay the death benefit. But Plaintiff did not allege anything about “due proof.”

Plaintiff’s omission of information regarding this condition precedent renders insufficient Plaintiff’s allegations. As in *Careau* and other cases in the insurance context, Lincoln Benefit’s liability “depends on the satisfaction or performance of one or more conditions precedent,” so “the allegation of such satisfaction or performance is an essential part of the cause of action.” 222 Cal. App.3d at 1389. Because Plaintiff did not plead that the condition precedent (*i.e.*, due proof of death) was satisfied, waived, or excused, she has failed to state a claim for breach of contract. *Id.* at 1389-91.

20 C. **Plaintiff Failed to State a Claim for Breach of the Implied Covenant of Good Faith** 21 **and Fair Dealing.**

Like her breach of contract claim, Plaintiff’s claim for bad faith fails because she failed to allege that the Policy was breached, and failed to plead sufficient facts in support thereof. In California, the elements for a breach of the implied covenant of good faith and fair dealing in the insurance context are: “(1) benefits *due under the policy* must have been withheld and (2) the reason for withholding benefits must have been unreasonable or without proper cause.” *See Employer’s Assurance Co. v. Ford Store Morgan Hill, Inc.*, 608 F. Supp. 3d 930, 946 (E.D. Cal. 2022) (emphasis added) (quoting *Love v. Fire Ins. Exchange*, 221 Cal. App. 3d 1136, 1151 (1990));

1 *O'Brien v. HII Ins. Solutions*, 2021 WL 1060398, at *8 (same).

2 In *O'Brien*, the plaintiffs purchased health insurance from an unlicensed agent/broker
 3 allegedly working for HII Insurance. *Id.* at *1. The plaintiffs alleged that, *inter alia*, the defendants
 4 did not follow proper claims handling procedures that exceeded the scope of their contractual
 5 obligations. *See id.* at *1, *7. The Court dismissed the claim for breach of the implied covenant
 6 of good faith and fair dealing, noting that “where an implied covenant claim alleges a breach of
 7 obligations beyond the agreement’s actual terms, it is invalid.” *Id.* at *7 (citing *Guz v. Bechtel
 8 Nat'l, Inc.*, 24 Cal. 4th 317, 326 (2000)); *see also Mudpie, Inc. v. Travelers Casualty Ins. Co. of
 9 Am.*, 487 F. Supp. 3d 834, 844 (N.D. Cal. 2020) (failure to sufficiently allege that benefits were
 10 withheld means that the “threshold requirement” for a bad faith claim has not been met); *Protégé
 11 Restaurant Partners LLC v. Sentinel Ins. Co., Ltd.*, 513 F. Supp. 3d 981, 993 (N.D. Cal. 2021) (“As
 12 Plaintiff has failed to allege that benefits were due to it, Plaintiff is unable to meet both elements
 13 for a bad faith claim.”). Courts in California have repeatedly endorsed this principle. *See Cal.
 14 Shoppers, Inc. v. Royal Globe Ins. Co.*, 175 Cal.App.3d 1, 57 (1985) (“[W]ithout actual presentation
 15 of a claim by the insured in compliance with [the claims procedure] contained in the policy, there
 16 is no duty imposed on the insurer to investigate the claim.”).

17 Here, Plaintiff failed to allege that the Policy was breached. As in *O'Brien*, she did not
 18 identify any term that was allegedly breached, and she did not even cite provisions of the Policy
 19 relating to nonpayment of premium, lapses, and/or the payment of benefits. *See* 2021 WL 1060398,
 20 at *7. However, a review of the Policy makes clear that Plaintiff’s claims (both for breach of
 21 contract and bad faith) are premised on purported obligations that exceed the terms of the Policy
 22 and the parties’ contractual obligations. Most significantly for purposes of her bad faith claim,
 23 Plaintiff failed to allege any facts to support that benefits were *due* and withheld. Plaintiff alleged
 24 generally that Lincoln Benefit wrongfully “refus[ed] to pay the death benefit,” but she did not at
 25 any point allege any facts to support that the death benefit was *due*. Plaintiff did not allege, for
 26 example, that Dang paid premium to keep the Policy in force, that the conditions precedent were
 27 satisfied or were otherwise excused, and/or that she submitted due proof of death. Plaintiff alleged
 28 only that she submitted a claim, Compl. ¶ 39, but it is not clear what she means by this. But even

1 assuming Plaintiff submitted a “claim,” the Policy requires “due proof” of death. The Policy
 2 describes and defines “due proof” in various ways. *See supra* at 2, 10. Plaintiff did not allege that
 3 she submitted any of the items that constitute “due proof” under the terms of the Policy. Plaintiff’s
 4 bad faith claim necessarily fails because Plaintiff’s claim assumes obligations “beyond [the
 5 Policy’s] actual terms.” *See O’Brien*, 2021 WL 1060398, at *7.

6 Benefits are not due because Plaintiff says so. The Policy requires more. Absent factual
 7 allegations that benefits were in fact due, Plaintiff’s bad faith claim necessarily fails.¹²

8 **IV. CONCLUSION**

9 Plaintiff failed to sufficiently allege (i) that Lincoln Benefit’s alleged breach of the Policy
 10 caused her any damage; (ii) that all conditions precedent to Lincoln Benefit’s performance were
 11 satisfied; and (iii) that Dang performed under the contract or that his performance is otherwise
 12 excused. Plaintiff also failed to allege facts to support the very basic requirement of a bad faith
 13 claim (*i.e.*, that benefits were due but withheld). Plaintiff’s allegations are insufficient to state
 14 claims against Lincoln Benefit, and the Complaint should be dismissed.

15 DATED: June 14, 2023

FAEGRE DRINKER BIDDLE & REATH LLP

17 By: /s/ Tarifa B. Laddon
 18 TARIFA B. LADDON

19 Attorneys for Defendant
 LINCOLN BENEFIT LIFE COMPANY

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 26 ¹² Should the Court nonetheless deem Plaintiff’s allegations sufficient, Plaintiff’s claim fails as a
 27 matter of law because Plaintiff did not – and cannot – “sufficiently allege facts for the Court to
 28 infer that [Lincoln Benefit] withheld benefits unreasonably or without proper cause.” *Dr.
 Tarlochan Singh DDS Inc. v. Dell Computers*, 2023 WL 2541849, at *6 (E.D. Cal. Mar. 16, 2023)
 (report and recommendation).